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In the

Supreme Court of the United States

OCTOBER TERM, A. D. 1965

PEOPLE OF THE STATE OF ILLINOIS, ex rel. PAUL PAULING, by ARTHUR PAULING, his Brother and Next Friend,

Petitioner,

vs.

DR. GABRIEL MISEVIC, SUPERINTENDENT, KANKAKEE STATE HOSPITAL, KANKAKEE, ILLINOIS.

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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INDEX

	PAGE
Petition for Writ of Certiorari	1
Summary Statement of Matter Involved	3
Basis of Court's Jurisdiction	4
Statutory Provisions Involved	4
Questions Presented	4
Constitutional Provisions Involved	5
Reasons Relied On for Issuance of Writ	5
Conclusion and Prayer for Writ	15
Appendices:	
No. 1—Original Petition for Writ of Habeas Corpus	1a
No. 2—Illinois Revised Statute 1963, Chap. 65, Section 22(2)	6a
No. 3—Denial of Writ of Habeas Corpus by Lower Court	6a
No. 4—Opinion of Supreme Court of Illinois upholding Order of Lower Court	11a
No. 5—Illinois Constitution (1870) Article II, Sec. 2	15a
No. 6—United States Constitution, Amendment XIV Section 1	15a

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MAY IT PLEASE THE COURT:

The relator petitioner, Paul Pauling, and Arthur Pauling, his brother and next friend, are citizens of the United States of America, and respectfully represent:

Paul Pauling was indicted in the Criminal Court of Cook County, Illinois, in 1954 for the crime of assault with intent to commit murder, in cause No. 54-1013; on the trial on the merits he was found to be insane at the time of the commission of the offense, and Judge Edward B. Case, who presided, found that he had not permanently

recovered from his insanity and entered the following order,

> And it is further ordered and adjudged, that if in a subsequent hearing before a jury, the said Paul Pauling shall be determined by a verdict to have recovered from such insanity, he shall be discharged from custody by due process of law.

Paul Pauling was thereupon incarcerated in the Illinois Security Hospital at Chester, Illinois, and subsequently transferred to the Kankakee State Hospital, Kankakee, Illinois, where he is now being detained, having become totally blind. A petition for a writ of habeas corpus was filed in the Criminal Court of Cook County, Illinois, on the 6th day of February, A. D. 1964, praying that the writ issue and require Dr. Gabriel Misevic, Superintendent of the Kankakee State Hospital, Kankakee, Illinois, to produce the body of Paul Pauling before the Hon. Alexander Napoli, Chief Justice of said court, and to discharge him. For some time he, Paul Pauling, had been permitted to go outside the grounds of the Kankakee State Hospital and spend several days at a time at the home of his brother, Arthur Pauling, his next friend herein, on the Pauling farm. (Appendix 1).

The claims were brought to the Criminal Court of Cook County under the provisions of the Illinois Habeas Corpus Act (Ill. Rev. Statutes, 1963, Chapter 65, Section 22, paragraph 2) (Appendix 2).

On the 18th day of February, A. D. 1964, on the return of the writ, instead of following the usual procedure, and setting the matter for hearing on the merits, so that the State could have the relator examined and evidence produced on both the part of the relator and the respondent, the respondent put on a witness, Dr. Janevicius, over

the objection of counsel for the relator who testified as to the mental condition of Paul Pauling, and the court thereupon quashed the writ and remanded the relator to the custody of the respondent, in whose custody he now is. (Appendix No. 3).

An appeal from the order of the Criminal Court of Cook County quashing the writ of habeas corpus and remanding petitioner to the custody of respondent was taken to the Supreme Court of Illinois, and the order of the lower court was affirmed, Cause No. 38584. (Appendix 4).

The purpose of the present petition is to have the order of the Criminal Court of Cook County, and the affirmance of the order of said court by the Supreme Court of Illinois, and the questions arising thereunder reviewed by this court to determine whether or not the relator is being deprived of his liberty without due process of law, in violation of the provisions contained in the 14th Amendment of the Constitution of the United States of America.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The question in this case resolves itself into the interpretation of an Illinois Statute which states: "If after commitment such person in a subsequent hearing before a jury shall be determined by verdict to have entirely and permanently recovered from such insanity, he shall likewise be discharged from custody." (Ill. Rev. Stat. 1953, Chap. 38, par. 592). In other words, when a man is found to be schizophrenic, and confined until he shall have recovered from his malady, completely and permanently, recovered, could the legislature have possibly intended that a man should stay in a mental institution until he dies, even though he be totally blind and completely helpless.

BASIS OF THE COURT'S JURISDICTION.

This august Court may by petition for writ of certiorari have the instant case certified to it for determination under the provisions of Title 28, United States Code, Section 2101 (c) approved June 25, 1948. The order of the Criminal Court of Cook County, rendered on the 15th day of February, A. D. 1964, was upheld by the Supreme Court of Illinois, on the 24th day of November, A. D. 1964, the Supreme Court of Illinois, being a court of last resort in Illinois.

STATUTORY PROVISIONS INVOLVED.

Illinois Habeas Corpus Act, Chap. 65, Ill. Rev. Statutes, 1963, Section 22, Par. 2.

Illinois Criminal Code, Section 12 of Division II (Ill. Rev. Stat. 1953, Chap. 38 par. 592.)

QUESTIONS PRESENTED.

I.

Should the Statute of the State of Illinois, in this instance be construed in such a manner that, where a man cannot be proved to have completely and permanently recovered from schizophrenia, but where he is no longer dangerous, and is helpless and can harm no one, nevertheless, does he come within the meaning of the definition of complete and permanent recovery? To put it another way, is not the allegation in a petition for a writ of habeas corpus "that relator is not a source of danger to himself, his family, or community. No further benefit can come to him or society by his remaining in a State Hospital," sufficient to warrant a hearing on the petition for the writ and for his discharge. Or, to put it another way, does not a strict interpretation of the Statute, demanding

evidence that the patient has completely recovered, and that the recovery is permanent, nullify the statute? Could it be that the legislature intended that all schizophrenics should die in institutions? Or rather, is the statute one enacted for the protection of society, and not one the purpose of which is to sentence a man to death in an institution?

II.

Does further incarceration of Paul Pauling, blind, helpless, and no longer dangerous violate the guarantees contained in Section I of the 14th Amendment of the United States Constitution, and of the provisions contained in Article II, Section 2 of the Constitution of the State of Illinois, (1870).

CONSTITUTIONAL PROVISIONS INVOLVED.

United States Constitution, Amendment XIV.
Illinois Constitution, Article II, Section 2 (1870).

REASONS RELIED ON FOR THE ISSUANCE OF THE WRIT.

The cases are legion, which hold that the letter of a statute should not be followed when it leads to an absurdity and an injustice. In the case of *Gallagher* v. *New York and New England Railway Co.*, 57 Conn. 442, 18 A. 786, one finds a statute requiring all railroads to build fences along their right-of-ways. In this instance the tracks of two railroads were so close together that it was impractical for either one to build a fence between them, and as a result a horse was killed. In construing the statute which read, "Every railroad company shall erect and maintain fences on the sides of the railroad operated by it at such place or places as the railroad commissioners shall direct, and every rail-

road company operating any railroad constructed under any act of incorporation passed since the first Wednesday of May, 1950, or hereafter constructed, shall cause sufficient fences to be erected and maintained, on the sides of such railroads, except at such place or places as the railroad commissioners shall judge them unnecessary, such fences to be erected by all companies hereafter organized within twelve months after they enter upon and take possession of the land through which their railroads pass." The court in construing this statute, said on page 444,

> The defendant, having been incorporated since the date mentioned in the statute, is subject to its provisions, whatever construction must be given to them. It is conceded also, that the railroad commissioners have ever passed upon the question as to a fence at this place or adjudged the same unnecessary.
>
> As this negates the only exception expressly mentioned in the statute, the defendant railroad is undoubtedly brought within the strict literal terms of the statute. So that the practical question before us is, whether it is the duty of the court to administer and apply the statute according to its letter, or according to its intent and object.
>
> And here one of the approved canons of interpretation comes to our aid, namely, that the letter should not be followed where it leads to absurdity and injustice. Smith's Commentaries on Statute and Constitutional Law, Sec. 486; Dwarris on Statutes, 587; 1 Kent's Commentaries (7th ed.) side page 462.
>
> What then would be the consequences should we interpret the statute in question according to its letter? Every railroad company incorporated since 1850 would, in the absence of any order from the commissioners, be required to fence both sides of its road, though the effects might be to cut off, or render extremely difficult, the ingress or egress of

> passengers to its stations, or the reception and delivery of freight. The language would even include places where the railroad track intersects public highways or other railroad tracks, or where it passes over rivers, or bodies of water. Such result could not have been within the intent of the legislature. It is therefore our duty to discard a literal and adopt a rational construction. The manifest object of the act was to require fences to be built and maintained against private fields and lots where domestic animals might be feeding or stationed. It could not have been contemplated that animals requiring such protection would be on an adjoining railroad track, and it is obvious that a fence confining them to one track would ordinarily increase rather than diminish the risk of injury, since it would limit and narrow the facilities for escape from the approaching train.

Following the reasoning in *Gallagher* v. *New York and New England Rail Road Co.*, immediately cited above, it could not have been contemplated that a person who may never be tried for an offense because of insanity at the time of the commission of an offense, should be subject to slow death in an institution, even though he is totally harmless.

The purpose of law is to promote justice, or establish justice, and not injustice, and where a strict construction of a statute promotes injustice, then the courts are bound so to construe a statute so that reason and justice will be a result. In the case of *Stiska* v. *City of Chicago*, 405 Ill. 374, 90 N.E. 2d 742, the question of the construction of a municipal ordinance levying a tax on gross receipts from admission fees to witness or participate in "amusements". The court, while it upheld the lower court in certifying as to the validity of the ordinance, did say on page 378,

Statutes must be so construed as to be given a reasonable construction, if possible.

When one reads a statute, the primary question is the intent of the legislature, in enacting the statute. In the case of *Scott* v. *Freeport Motor Casualty Company,* 379 Ill. 155, 39 N.E. 2d 999, the question arose as to the construction of Section 77 of the Civil Practice Act, whereby the legislature granted the right of appeal from an order granting a new trial. The Court said on page 161,

The primary object in construing a statute is to ascertain legislative intent.

Surely, in the case at bar, the legislature could not have intended that a harmless insane person should be forever incarcerated and that only death could release him. We submit that Paul Pauling was sent away for no crime whatsoever, but for a mental condition, and for the protection of society.

In the opinion of the Supreme Court of Illinois, Mr. Justice Daily cited *Louisville and Nashville Railroad Company* v. *Industrial Board,* 282 Ill. 136, 118 N.E. 483 (Appendix 4), the court said on page 139,

> The intention of lawmakers is to be gathered from necessity and reason of the enactment and the meaning of the words, enlarged or restricted according to their real intent. In construing a statute, the courts are not confined to the literal meaning of words. A thing within the intention is regarded within the statute though not within the letter. A thing within the letter is not within the statute, if not also within the intention.

These dual criteria certainly are applicable in the case at bar, where there can be no complete and permanent recovery. Certainly the legislature did not contemplate

an impossibility. To continue the quotation from *Louisville and Nashville Railroad Company* v. *Industrial Board, supra* the court said,

> When the intention can be collected from the statute, words may be modified or altered so as to obviate all inconsistency with such intention. Where great inconvenience or absurd consequences will result from a particular construction, that construction should be avoided unless the meaning of the legislature is so plain and manifest that avoidance is impossible. The courts are bound to presume that absurd consequences leading to great injustice were not contemplated by the legislature, and a construction should be adopted that it may be reasonable to assume was contemplated.

Certainly in the case at bar, the only reasonable intent of the legislature was that a person should remain in restraint until either a complete and permanent recovery had been achieved, or, until the patient became completely harmless, and the safety of society would not be jeopardized by releasing him.

In the case of *Peabody* v. *Russell*, 301 Ill. 439, 134 N.E. 148, the question of the construction of a provision contained in the constitution was determined. However, the court did say on the subject of the construction of a statute, on Page 442,

> It is a canon of construction well recognized, not only in this court but in courts of other jurisdictions, as it relates to statutes, that the chief purpose is to give effect to the intention of the legislature. In seeking such intention, courts are to consider the language used, the object to be obtained or the evil to be remedied. This may involve more than the literal meaning of the words. That which is within the intention is within the statute though not within the letter, and though within the letter, it is nevertheless not within the statute if not likewise, within the attention.

Again, we are driven to the position that the intention of the legislature to bring about justice, not injustice, and protection from society, must be read into the statute, in order to give it a proper interpretation.

Many absurd consequences of strict construction of statutes have been recognized by our courts, and the courts have veered away from such strict constructions time and time again. In the case of *Preston* v. *Drew*, 33 Me. 558, Chapter 211 of the Maine Statutes of 1851 read in part, "No action of any kind shall be had or maintained in any court for the recovery or possession of intoxicating spirituous liquors, or the value thereof." An officer under a warrant seized eight barrels of rum. An action of replevin was filed by the owner of the rum. Defendant under the rules filed a non-suit and same was granted.

An appeal was taken to the Supreme Court of Maine. The Court in setting aside the non-suit, and granting a new trial, said on page 56,

> The language of the Act, which declares that no action shall be maintained for the recovery or possession of such liquors, or their value is without limitation; and by a literal construction, it would deprive one who has purchased them, of a town or city agent, for allowable purposes, of the right to maintain an action to recover them or their value from a person who has taken them from his possession without any right or authority, or who had wantonly destroyed them * * * can one conclude that an intelligent legislature would have intended to hold out such temptation for the lawless subtraction or destruction of private property? The results are too extraordinary and unjust to allow an intelligent and considerate mind to believe that they could have been foreseen or approved.
>
> The general language must therefore be restricted so as to accomplish the general intent and declared pur-

> pose of the act without producing such results, or the provision, now under consideration, must be in plain violation of the provisions of the constitution, and void.

One additional case may be cited, although it is probably not necessary to cite any more, but we take the liberty of setting out the opinion, rather than briefing it, in order to indicate how a statute has to be construed when a purely personal and human matter is involved, and in order to render justice.

In the case of *Patterson* v. *Wiesner*, 218 Alabama Reports, 117 So. 663 the court said on pages 137, 138,

> This action is under the Workmen's Compensation Law (Laws 1919, P. 206) and the appeal is by the defendant employer from a judgment awarding compensation to the injured workman. (1) The plaintiff had been totally blind in his left eye since childhood, and while working for the defendant, suffered an accident causing the practically total loss of sight in the remaining eye, and resulting in permanent total incapacity.
>
> The trial court held that the case is governed by the Code #7551 (e)1½, which declares, "if an employee has previously lost the sight of one eye or lost one leg or lost one arm, and thereafter in the same employment or in the employment of another, he should by accident receive additional injuries so as to proximately cause the loss of sight of both eyes or the loss of both legs, or the loss of both arms, said employee shall receive three fourths of the amount provided hereunder for one who has received a permanent total disability and there shall be credited on said three-fourths amount any payments which said employee had received or may receive for his first disability."

Accordingly the award was made on the basis of three-fourths of a total disability when all of it is suffered presently, as provided by section 7551 of the Code, under subdivision (d) and (e).

Defendant's primary contention is that subdivision (e) one and one-half is not applicable to this case, and hence that the award under that provision is illegal and excessive. The argument is that the clause, "and thereafter in the same employment or in the employment of another" is restrictive in meaning and purpose, and that unless the eye, leg, or arm previously lost was lost in a previous employment, the resulting disability, though permanent and total, is not within the protective purpose and operation of the statute.

If we are to look no further and see no more than a mere array of words, if we are to close our eyes to the plainly apparent purpose of this particular provision, and if we could ignore the general intention and structure of the law as a whole, we might concede the virtue of plausibility to this view of the statute. It must be conceded that what it plainly means is awkwardly expressed. If its language is to be narrowly and literally construed, the statute would be without sense or meaning, because of its second condition that the later "additional injuries" must "proximately cause the loss of sight of both eyes, or the loss of both legs, or the loss of both arms"—a condition impossible of fulfillment.

Literally construed, this sentence embodies an Irish "Bull" of excellent quality, for it says that, although one of the two members in question has been previously lost, the later injury must cause the loss of both of them. This is what it says, but of course we understand at a glance that this is not what it means.

So with the clause here under consideration. The manifest intention of the law is to provide for workmen who have suffered total disability by reason of the losses specified. There can be no difference

in law, or in policy, or in humanity, between the case of a workman whose first one of two members was lost in a previous employment, and of a workman whose first one of two members was lost by any accident or misfortune outside of a previous employment. The condition of the workman is exactly the same, his need for compensation is just as urgent, and the award equally fair and just. We are therefore unwilling to impute to the Legislature, a purpose to make a distinction so shallow and senseless, and so lacking in the spirit of fairness and humanity, unless the language of the statute forcibly drives us to that conclusion.

We do not find in this language any such compulsion. Our judgment is that the purpose of this sentence was to expand rather than contract the operation of the law—at least, to make it clear that it was not restricted to injuries suffered in the one employment or the other. The meaning is, whether in the one or the other. Conceding that it fails in comprehensiveness, it can on no rational grounds be regarded as definitive or restrictive of the mode or circumstances of the previous loss.

The general rule of construction is very well stated in 25 R.C.L. 967, No. 222, as follows:

"It often happens that the true intention of the law making body, though obvious, is not expressed by the language employed in a statute when that language is given its literal meaning. In such cases, the carrying out of the legislative intention, which, as we have seen, is the prime and sole object of all rules of construction, can only be accomplished by departure from the literal interpretation of the language employed. Hence the courts are not always confined to the literal meaning of the statute; the real purpose and intent of the legislature will prevail over the literal import of the words. When the intention of a statute is plainly discernible from its

provision that intention is as obligatory as the letter of the statute and will even prevail over the strict letter. The reason of the law, as indicated by its general terms should prevail over the letter, when the plain purpose of the act will be defeated by the strict adherence to its verbiage. It is frequently the case that, in order to harmonize conflicting provisions and to effectuate the intentions and purposes of the law making power, courts must either restrict or enlarge the meaning of the words. The legislative intention as collected from an examination of the whole as well as the separate parts of the statute, will prevail over the literal import of particular terms, and will control the strict letter of the statute where adherence to such strict letter would lead to injustice, to absurdity or contradictory provisions. It is an old and unshakable rule in the construction of statutes that the intention of a remedial statute will always prevail over the literal sense of its terms and therefore when the expression is special or particular, but the reason is general, the expression should be deemed general".

The court went on to say on page 139,

> And it has been very generally declared that a thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter, and a thing that is within the letter of the statute is not within the statute unless it is within the intention of the makers.

In the case at bar, it must have not been the intention of the legislature, in which a person cannot possibly under the law of the land, be convicted of an offense, by reason of his being insane at the time of the commission of the offense, put him away for as long as there is breath in his body, even though he be totally harmless, and can be taken care of by his family. What other purpose could the legislature have had in passing the statute, but to

protect society. Certainly, the statute must not be read in its strict literal meaning, where there is absolutely nothing further to be gained in protecting the public, by keeping a blind man under restraint and depriving him of his liberty.

We submit to this Honorable Court, that the denial of a hearing after the issuance of a writ of habeas corpus in the instant case and the refusal of the Circuit Court of Cook County, Illinois, to release Paul Pauling, and the affirmance of the decision of said Circuit Court in this matter is a clear deprivation of the liberty of Paul Pauling, without due process of law, within the provisions contained in the 14th amendment of the Constitution of the United States, and the provisions contained in Section 2, Article II, of the Illinois Constitution of 1870.

CONCLUSION

Wherefore, petitioner, Paul Pauling, by Arthur Pauling, his brother and next friend prays that the Writ of Certiorari may issue, that this cause have a full hearing.

Respectfully submitted,

ARTHUR PAULING,
brother and next friend of Petitioner.

PAUL E. THURLOW
Attorney for petitioner

APPENDIX NO. 1.

Page of Record

3 Petition for a writ of Habeas Corpus, filed February 6, 1964, as follows:

Now comes Arthur Pauling, and represents to this Honorable Court as follows:

1. That Arthur Pauling is the brother and next friend of Paul Pauling, relator herein, who is unjustly and unlawfully restrained and detained against his will in the State Hospital at Kankakee, County of Kankakee, State of Illinois, by Dr. Gabriel Misevic, managing officer of said State Hospital, respondent herein.

2. That said Paul Pauling was on the 30th day of June, A.D. 1954, in the Criminal Court of Cook County, Illinois, in Cause No. 54-1013, People of the State of Illinois, vs. Paul Pauling, indicted for the crime of assault with intent to commit murder, he was later found to be insane at the time of the commission of the offense, in manner and form as follows:

> Therefore, it is considered, ordered and adjudged by the Court that Paul Pauling was at the time of the commission of the offense charged in the indictment, to-wit: assault with the intent to commit murder, etc., a lunatic and insane person, and that he has not permanently recovered from such lunacy or insanity.
>
> And it is further ordered and adjudged that the sheriff of Cook County take the defendant, Paul Pauling, from the bar of this Court to the Common Jail of Cook County, thence to be delivered to the Department of Public Welfare of the State

4 of Illinois, to be confined in the Illinois Security Hospital at Chester, Illinois.

And it is further ordered and adjudged, that if in a subsequent hearing before a jury, the said Paul Pauling shall be determined by a verdict to have entirely recovered from such insanity, he shall be discharged from custody by due process of law.

3. That the above judgment and order of commitment is a nullity, in that it was not signed by the presiding judge, the Honorable Edward B. Casey.

4. That subsequent to the transfer of Paul Pauling to the Illinois Security Hospital, at Chester, Illinois, he was transferred to the Kankakee State Hospital, Kankakee, Illinois, where he is being restrained and detained by virtue of the above set forth judgment and order of commitment.

5. That on the 20th day of November, A.D. 1963, Paul Pauling, relator herein was examined by Dr. H. H. Garner, M.D., a psychiatrist, licensed to practice in the State of Illinois, that after having examined your relator, Dr. Garner reported, "He is not a source of danger to himself, his family, or community. No further benefit can come to him or society by his remaining in a State Hospital." A copy of the written report of Dr. Garner is attached hereto, and marked "Relator's Exhibit A."

6. That said Paul Pauling is not now insane, that further incarceration is totally unnecessary, that he is being held in custody without due process of law, in violation of the provisions contained in Article II Section 2, of the Constitution of the State of Illinois, of 1870, and of the 14th Amendment of the Constitution of the United States of America.

7. That said Paul Pauling is being deprived of his liberty by the respondent herein, without due process of law, in violation of Article II, Section 2, of the Constitution of the State of Illinois, of 1870, and of the 14th Amendment of the Constitution of the United States of America, in that he is not being held in custody by virtue of process of any court

or judge of the United States, in a case where such court has exclusive jurisdiction; nor by virtue of a final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree; nor for any treason, felony or other crime committed in any other state or territory of the United States, to be delivered up to the executive power of such State or Territory.

Wherefore, your relator, Paul Pauling, by Arthur Pauling, his brother and next friend prays as follows:

1. That the writ of habeas corpus issue out of this court in this behalf, directed to said Dr. Gabriel Misevic, managing director of said State Hospital, so that said Paul Pauling, Relator herein, may be brought before this court to do, submit to, and receive what this court may require, and

2. That said Paul Pauling, relator herein, be released thereupon, from restraint and detention.

People Of The State Of Illinois, ex rel. Paul Pauling, by Arthur Pauling, his brother and next friend.

/s/ Arthur Pauling
Arthur Pauling

Paul E. Thurlow,
Attorney for Relator,
19 East Jefferson Street,
Joliet, Illinois.
Phone 726-7194

State Of Illinois }
County Of Will } ss

Now comes Arthur Pauling, and being first duly sworn, upon oath deposes and says, that he is the brother and next friend of Paul Pauling, relator in the above entitled cause, that he has read the foregoing petition, and the same is true.

/s/ Arthur Pauling
Arthur Pauling

Subscribed and sworn to before me this 20th day of January, A.D. 1964.
(Seal) Notary Public

Let the Writ of Habeas Corpus issue and be made returnable before me this 18th day of February, A.D. 1964.

/s/ Alexander J. Napoli
Circuit Court, Criminal Division.

6 RELATOR'S EXHIBIT "A"

December 3, 1963

TO WHOM IT MAY CONCERN

Re: Mr. Paul Pauling

I saw Mr. Paul Pauling on Ward LL South at the Kankakee State Hospital on November 20, 1963. He was sitting in a chair and clothed in neat and clean pajamas (the patient is on an infirmary ward). When I introduced myself he responded by smiling and extending his hand. It was obvious that he was blind. Throughout the interview there was no unusual or bizarre behavior. The records of the hospital essentially confirm the absence of bizarre behavior, overt evidence of hallucinations or delusions, unusual eating habits or unusual conduct with relatives or fellow patients. An attendant, Mr. Somers, gave me confirmating information. His speech was relevant and coherent and reached the goal idea.

The mood of the patient was in keeping with the situation. He seemed happy in a restrained sort of way at what he perceived was a prospect that his release from the hospital might be forthcoming. He smiled appropriately at times. No evidence of anger or irritability was elicited by questions about his responsibility for the difficulties that led to his hospitalization.

The mental content of this man seems somewhat circumscribed by the fact that he has been living in a world of isolation which has been further narrowed by his blindness and living in an infirmary

ward of a mental hospital. When stimulated to discuss matters concerning his family he responds with coherent, relevant, and goal directed responses. Hallucinations are not suggested by any of his behavior.

7 There was no evidence of paranoid thinking. "No one is against me." Ideas of reference or feelings suggesting anything of unusual significance affecting him were not elicited. There was little that he would express about the incident that led to his arrest. "It was so long ago I don't remember well." It was a mistake. He is a very religious man whose faith in the healing power of God and the fact that he expects to be cured of blindness by God's intervention must be evaluated in the context of a background of deep and bizarre religious beliefs of the family.

The intellectual functions of memory, recall, judgment orientation are in keeping with his approximately middle to dull normal intelligence. Isolation and blindness may be found to have decreased general knowledge from that of earlier examinations.

It is my impression that Mr. Paul Pauling has been what would be called a schizoid personality until shortly before the time of his arrest. His somewhat isolated and bizarre social status is a characteristic of a large percentage of our so called normal people. The psychotic period occurring in 1959 has since been replaced by a remission to a normal non-psychotic state in which the schizoid personality, blindness, his incarceration, etc. all have contributed to creating a placid resignation to seeking a life of deep religious faith. He seeks a degree of freedom to work, in that simple manner that of which he will

8 be capable, on the farm and to live in a state of relative isolation and regressive dependence with his brothers. He is not a source of danger to himself, his family, or community. No further benefit can come to him or society by his remaining in a state hospital.

Sincerely,

/s/ H. H. Garner, M.D.

H. H. Garner, M.D.

HHG:jr

APPENDIX NO. 2.

Illinois Revised Statutes, 1963, Chapter 65 Section 22 (2):

Causes for discharge when in custody on process of Court:

If it appear that the prisoner is in custody by virtue of process from any court legally constituted, he can be discharged only for some of the following causes:

2. Where, though the original imprisonment was lawful, yet, by some act, omission or event which has subsequently taken place, the party has become entitled to his discharge.

APPENDIX NO. 3.

28 The Court: All right, I think I'll permit the writ to issue. What date do you want it sent for?

Mr. Deeny: He'll first have to be brought up here, Judge, and then you'll have to give the State an opportunity to make an examination. That should be within a week, your Honor.

The Court: Make the writ returnable February 18th.

31 Mr. Deeny: Judge, on the return of the writ in this case I would like to call the attention of the Court to the fact that there was some doubt the last time up in this case whether or not the writ should even be granted because of the allegations not being sufficient to support the issuance of a writ.

I expect Dr. Janevicius, who is Clinical Director of that Hospital to be in court here. I think they went to get him. Should be here, Judge.

Maybe the Court would like to hear further on the mental condition of this relator before the Court before taking further action on the matter.

Mr. Thurlow: If the Court please, I think this is not the time for that. The writ has been issued. I think this matter should be set down for a hearing. As to his mental condition, that is a matter for the jury to consider.

When we were here the last time, your Honor read the petition and the letter from Dr. Garner.
32 Because of the letter of Dr. Garner, your Honor said, "I am inclined to issue this writ and proceed in this case. Now, the time for him to testify on this matter is at the hearing.

The crux of this whole case is going to be, I think, jury instructions as to mental capacity and as to sanity.

I am willing to concede for the purpose of argument that schizophrenia is not completely curable. My argument in this case is that this man has not sufficiently recovered so that he is no longer harmful to the community and should be released. Because if we are going to stick to the letter of the definition of schizophrenia, he automatically goes to —he is incarcerated until he dies. I do not think that is the law in this country at all.

That is the thing that is uppermost in my mind in this case. I think that this matter should be set for hearing and the doctor—and our psychiatrists after, the State will probably want a BCX in this case, when all set to go, then our experts can testify. And on that basis of that question will be determined
33 whether or not the man should be released.

Mr. Deeny: The only question is, is he a fit subject now to be restored to society, and is he entitled to a hearing on that question. That is the question before the Court this morning, is he entitled to a hearing.

Mr. Thurlow: I submit anyone that raises this question, and we have raised it properly in this, is entitled to have his day in court. In this case, I think this man is entitled, and I would like to make a record of this and have these psychiatrists heard.

34 and see where we go from there. Otherwise than that, your Honor, this man as soon as he found to be schizophrenic was then condemned to die in custody.

35 The Court: You have someone here you want to testify?

Mr. Deeny: Yes, I do.

The Court: Let's swear them in.

Mr. Deeny: Swear this witness.

Mr. Thurlow: For the purpose of the record, I would like to object to his being heard at this time.

The Court: Let the record show an objection.

DR. V. JANEVICIUS, called as a witness by the Respondent, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Deeny.

Q. What is your profession or occupation?

A. I am physician, psychiatrist.

Q. Are you duly licensed to practice medicine in the State of Illinois?

A. Yes.

36 Q. Do you hold an official position, Doctor?

A. Yes.

Q. What is it?

A. I am Clinical Director of the Kankakee State Hospital.

Q. In that position are you acquainted with the relator in this case, Paul Pauling, as an inmate of that institution.

A. Yes, I am.

Q. Have you had occasion to observe him in that institution as an inmate?

37 A. Yes.

Q. Have you made examinations of Paul Pauling?

A. Yes, I did.

Q. When were they made?

A. I saw him, Mr. Pauling, on three occasions in interview. First was July 10, 1963; July 13, 1963, and just recently, yesterday, February 17th, '64.

Q. From your experience and your examination of the relator in this case do you have an opinion as to his mental condition at this time?

A. Yes, I do.

Q. What is that opinion?

Mr. Thurlow: I object to that, if the Court please, unless he states what the examination was, what he did, what tests were given, what he said and answers given, and so on.

The Court: I will sustain the objection at this time.

Mr. Deeny: Q. What did your examination consist of, Doctor?

The Witness: A. It was a complete psychiatric examination which consisted interviewing of patient and probing into certain areas of the patient's mental condition.

38 Q. Did you ask questions, did he make answers?

A. Yes, I did ask questions and he made answers.

Mr. Deeny: Q. Based upon your examination, on the reports you have, do you have an opinion as to the mental condition of this subject?

Mr. Thurlow: I object to that, your Honor, unless he submits the questions and answers that were given. We have absolutely nothing to go by other than he says he asked questions and he gave answers.

The Court: I will let him answer the question. The objection is overruled.

Mr. Deeny: Q. What is your opinion, doctor?

The Witness: A. My opinion Mr. Pauling is still suffering from condition which is described as schizophrenic reaction, paranoid type.

Q. Do you have an opinion, doctor, as to whether Paul Pauling is a fit subject to be returned to society at this time?

A. Yes, I have opinion.

Q. What is that opinion?

A. Mr. Pauling is not ready to return to society.

Mr. Deeny: That's all.

39 *Cross Examination by Mr. Thurlow.*

Q. When would he be ready to return to society in your definition of schizophrenia?

A. Maybe never.

Q. Pardon me. And has any of his conduct indicated that he is a dangerous person to be returned to society?

Mr. Deeny: Object.

The Court: He may answer.

The Witness: A. In case of Mr. Pauling, we do not consider him dangerous. But we also do not keep a patient in hospitals because they are dangerous. They are there for treatment.

40 Q. In his blind state were he taken, say, to the farm where his brother lives and kept on the farm with the family, do you consider that it would be dangerous for society?

A. Mr. Pauling is 24 hour day supervision by professional personnel.

Q. If he were put into a private institution where he would have 24 hour supervision, would that be sufficient?

A. Oh, yes.

42 Mr. Thurlow: When we allege he is recovered his reason, then a doctor gives his report, and there is a question as to whether or not he is returnable to society. I think that in itself in the petition is sufficient.

APPENDIX NO. 4.

Docket No. 38584—Agenda 45—September, 1964.

The People *ex rel.* Paul Pauling, Appellant, v. Dr. Gabriel Misevic, Superintendent of Kankakee State Hospital, Appellee.

Mr. Justice Daily delivered the opinion of the court:

This is an appeal from an order of the circuit court of Cook County quashing a writ of *habeas corpus* and remanding the relator, Paul Pauling, to the custody of respondent, Dr. Gabriel Misevic, who is superintendent of the Kankakee State Hospital. Section 5 of article VI of our constitution, as amended with effect from January 1, 1964, gives us jurisdiction to entertain the appeal. *Cf. People ex rel. Pauling* v. *Uffelman,* 9 Ill. App. 2d 412.

In June, 1954, Paul Pauling was indicted and tried in the criminal court of Cook County for the crime of attempted murder, but a jury found him not guilty by reason of insanity when the offense was committed. At the same time, in conformity with section 12 of division II of the Criminal Code then in effect, (Ill. Rev. Stat. 1953, chap. 38, par. 592,) the jury made a further finding that he had not "entirely and permanently recovered from such insanity." The trial court, as further provided by the statute, thereupon entered an order transferring relator to the custody of the Public Welfare Department and directing his confinement in a security hospital until such time as "in a subsequent hearing before a jury, the said Paul Pauling shall be determined by a verdict to have entirely recovered from such insanity." Since that time relator has been confined in State hospitals, and it is undisputed that he was afflicted with schizophrenia, a form of insanity.

Nearly ten years later, in February, 1964, a brother of the relator filed a petition for writ of *habeas corpus* in his behalf, alleging that relator is not now insane and praying for his release from confinement. In addition, it

was alleged that relator had been examined by a licensed psychiatrist in November, 1963, and that the doctor reported: (1) That relator was no longer a source of danger to himself, his family or the community; and (2) that his continued confinement in a State hospital would bring no further benefit to the relator or society. A synopsis of the doctor's interview and his findings, attached to the petition as an exhibit, disclosed that relator has become blind during his confinement. Further, it is the reasonable intendment of the entire record that relator's brother, who resides on a farm, is willing to assume the burden of relator's care and custody.

A writ issued, returnable February 18, 1964, and on such date relator appeared in court with his counsel. However, after hearing arguments and permitting a State psychiatrist to testify that relator had not recovered his sanity and that he was still in need of 24-hour observation and treatment, the trial court quashed the writ and remanded relator to the custody of respondent. The precise basis for the order was that the petition was insufficient because it did not allege relator was "entirely and permanently" recovered as provided in the statute under which he was committed. In such regard, relator's counsel has admitted, both below and in the briefs filed in this court, that schizophrenia is a mental disease from which one never entirely recovers.

At issue here is that portion of the statute which states: "If after commitment such person in a subsequent hearing before a jury shall be determined by verdict to have *entirely and permanently* recovered from such insanity, he shall likewise be discharged from custody." (Ill. Rev. Stat. 1953, chap. 38, par. 592, emphasis ours.) Due to the circumstance that schizophrenics never fully recover, relator concedes that he cannot meet the criteria of "entire" recovery, or "permanent" recovery within the construction placed upon the word "permanent" in *People* v *Kadens*, 399 Ill. 394, 400-401. What he asks is that this court either except schizophrenics from the operation of the statute, or that we construe the statute as reflecting

a legislative intent that the confinement it directs should not continue once the insane person has become blind and harmless to himself and others. To sustain his first alternative relator points out that a schizophrenic can never be released from confinement within the contemplation of the statute, and brings to our attention medical opinion that prolonged confinement is in fact a detriment to one suffering from schizophrenia; as to the second alternative it is argued that ethics, morals and good conscience require such a construction.

We are sympathetic to relator's position and pleas, and we are likewise aware that the statute under which he is confined antedates new insights into the problem of mental illness and its treatment and control. These considerations, however, afford no basis for the judiciary to invade the province of the legislative arm of our government. The State, as *parens patriae*, exercises the same control over insane persons as was formerly exercised in England by its king, and under our form of government the power is exercised by the courts only through legislative enactments. (*Dodge* v. *Cole*, 97 Ill. 338; *Dowdall* v. *Hutchens*, 263 Ill. App. 275; *Cowdery* v. *Northern Trust Co.*, 321 Ill. App. 243.) Stated differently, it is the function of the legislature to pass laws for regulation of the property and person of those who are insane, and the judicial power may be exercised only in conformity with such laws.

In plain and unambiguous terms our legislature has provided that persons who escape the consequences of criminal acts by reason of insanity must, if the insanity continues at the time of trial, be given to the custody of the Public Welfare Department and confined in a security hospital until such time as they have entirely and permanently recovered from such condition. Where the words employed in a legislative enactment are free from ambiguity or doubt, they must be given effect by the courts even though the consequences may be harsh, unjust, absurd or unwise. (*Louisville and Nashville Railroad Co.* v. *Industrial Board*, 282 Ill. 136; *City of Nameoki*

v. *City of Granite City*, 408 Ill. 33.) Such consequences can be avoided only by a change of the law, not by judicial construction. (*City of Decatur* v. *German*, 310 Ill. 591,) and, by the same token, courts are not at liberty to read exceptions into a statute the legislature did not see fit to make, (*Belfield* v. *Coop*, 8 Ill. 2d 293,) or, by forced or subtle constructions, to alter the plain meaning of the words employed. (*People* v. *Shader*, 326 Ill. 145; *Stiska* v. *City of Chicago*, 405 Ill. 374.) Based upon these principles, we conclude here that the concession that relator had not entirely and permanently recovered from the condition which led to his confinement left the trial court with no alternative other than to quash the writ, and that any relief to relator from the operation of the statute must come from the legislature rather than the courts.

For a final contention relator asserts he was denied due process of law due to the failure of the trial court to set the matter for hearing on the merits. Under the circumstances reflected in this record, the point is not well taken. In view of the statutory criteria, relator's concession that schizophrenics never fully regain their sanity made any further proceedings unnecessary and superfluous.

The order of the circuit court, quashing the writ and remanding relator to the custody of respondent, is affirmed.

Order affirmed.

APPENDIX NO. 5.

Illinois Constitution (1870) Article II Sec. 2:

"No person shall be deprived of life, liberty, or property without due process of law."

APPENDIX NO. 6.

United States Constitution, Amendment 14 Sec. 1:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."